



U.S. CONSUMER PRODUCT SAFETY COMMISSION  
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CHAIRMAN INEZ M. TENENBAUM

**STATEMENT OF CHAIRMAN INEZ M. TENENBAUM ON THE COMMISSION DECISION  
REGARDING THE USE OF UNBLOCKABLE DRAIN COVERS AND COMPLIANCE WITH THE  
VIRGINIA GRAEME BAKER POOL & SPA SAFETY ACT**

Each year too many families face senseless tragedy in the drowning of a child. The Virginia Graeme Baker Pool and Spa Safety Act (VGB Act) is intended to create layers of protection and barriers to prevent drowning, drain entrapments and eviscerations like those suffered by Virginia Graeme Baker, Zachery Cohn and Abigail Taylor. Today I voted on the issue of unblockable drain covers in a manner that I believe embodies the true spirit and purpose of the VGB Act. I believe that children should be afforded the maximum level of protection envisioned by this Act at all times, especially when a drain cover is missing or broken.

The VGB Act requires that each public pool and spa in the United States be equipped with an anti-entrapment drain cover.<sup>i</sup> In addition, each public pool and spa in the United States with a single main drain *other than an unblockable drain* must be equipped with at least one or more of the following devices or systems: an automatic shut-off system, a gravity drainage system, a Safety Vacuum Release System or a suction-limiting vent system.<sup>ii</sup> Section 1403(7) of the Act defines an “unblockable drain” as “a drain of any size or shape that a human body cannot sufficiently block to create a suction entrapment hazard.”<sup>iii</sup> The issue presented to the Commission is whether the placement of an unblockable drain cover on a blockable sump creates an “unblockable drain” such that the safety systems listed above are not required.

While I recognize that unblockable anti-entrapment drain covers are an advancement in pool technology and have the potential to provide protection from all five common pool entrapment hazards, I must also recognize that this degree of protection is only afforded if the unblockable drain cover remains properly in place. At our public hearing on this issue, I was surprised to learn how many pool and spa drain covers often are removed for seasonal maintenance or may break due to age or deterioration. I have spoken out publicly about public pools and spas being out of compliance if the drain cover is missing or broken and stated that the facility should be closed until the drain cover is replaced because of the entrapment risks missing or broken drain covers pose to swimmers.

The use of an unblockable drain cover by itself does not address the entrapment risks posed by a missing or broken drain cover to the same degree as the installation of the safety systems expressly provided for in the VGB Act. Indeed, some states such as Washington have expressly stated that: “[n]ational experience with entrapment events all too frequently identify drain cover or fastener fatigue resulting in a broken or missing cover as the major contributor to entrapment-related injury and death. Relying on a cover to provide the sole measure of entrapment prevention, even one of ‘unblockable’ design meeting the *ASME A112.19.8-2007* standard, *presents a level of risk that Washington State finds unacceptable.*”<sup>iv</sup>

Despite this concern, today the Commission voted to interpret the VGB Act in a manner that allows an “unblockable drain” to be created solely by the installation of a compliant, unblockable sized drain cover. I dissent from this position because I believe that this approach fails to create the layers of protection intended

by the VGB Act, and necessary to prevent deaths and injuries from pool and spa drownings and entrapments. Under today's decision, when an unblockable drain cover is missing or broken, public pools and spas may be without a secondary backup system to prevent body, limb or mechanical entrapment hazards.

In my role as Chairman, I am not willing to gamble the safety of our children in the hope that drain covers throughout the nation that are commonly removed for maintenance always will be reinstalled correctly or that a missing or broken drain cover will be immediately noticed by an observant pool operator who will then shut down the pool before any children are at risk. While I understand that my colleagues have interpreted the VGB Act in a manner that they believe provides an equivalent level of safety, I can only hope that the use of unblockable drain covers without secondary backup systems will exceed all expectations such that the Commission's decision today provides an equivalent degree of protection for our children.

Separate from today's vote, I urge all operators and owners of public pools and spas to ensure that they have properly installed ASME/ANSI A112.19.8-2007 compliant drain covers, no matter the size of the drains, before opening up their facility to the public. As I stated last year, the law is clear and so are the obligations of the industry to comply with the VGB Act. By working together to adhere to the requirements of this child safety law, we can reduce the number of drowning and entrapment tragedies that occur each year.

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<sup>i</sup> 15 U.S.C. § 8003(c)(1)(A)(i).

<sup>ii</sup> 15 U.S.C. § 8003(c)(1)(A)(ii).

<sup>iii</sup> 15 U.S.C. § 8002(7).

<sup>iv</sup> Wash. State Dept. of Health, Div. of Env'tl. Health, "Pool and Main Drain Safety, Guidance for Complying with the New Federal Law," at 9 (Feb. 2009), <http://www.doh.wa.gov/ehp/wr/guidance-maindrainlaw.pdf>.